

BURLINGTON NORTHERN RAILROAD CO.,	:	Order Vacating Decision and
Appellant	:	Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 96-65-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	October 7, 1997

Appellant Burlington Northern Railroad Co. sought review of an April 8, 1996, decision issued by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a grain elevator located within Appellant's right-of-way across Blackfeet Allotment No. 2258. The Area Director did not file an Answer Brief during the briefing period for this appeal. By order dated July 10, 1997, the Board of Indian Appeals (Board) requested the Office of the Solicitor to file a brief on behalf of the Area Director.

On October 6, 1997, the Board received a copy of a September 30, 1997, letter from the Area Director to Appellant. The letter states in pertinent part:

After having consulted with members of my staff and an attorney from the Office of the Solicitor, I find it necessary and appropriate to reconsider [the April 8, 1996,] decision in light of additional facts and legal arguments presented to me. Accordingly, I hereby rescind and withdraw the \* \* \* decision \* \* \*.

Also on October 6, 1997, the Board received a Motion for Remand filed by counsel for the Area Director. The Motion states at pages 1-2:

On September 30, 1997, the Billings Area Director \* \* \* rescinded and withdrew the letter, dated April 8, 1996, which heretofore provided the basis for the above-captioned appeal. \* \* \* It follows that the [Board] presently has nothing to review in this matter. Therefore, the BIA \* \* \* respectfully requests that the Board issue an order remanding the above-captioned matter to the Billings Area Director for further analysis. The undersigned is authorized to inform the Board that the Appellant does not oppose this motion.

The Board has consistently held that once an appeal has been filed with it, BIA loses jurisdiction over the matter except to participate as a party in the appeal. The reasons for this rule were extensively discussed in Five Sandoval Indian Pueblos, Inc. v. Deputy Commissioner of Indian Affairs, 21 IBIA 17, 18-19 (1991), and will not be repeated here, except to

comment that the rule is part of any orderly review process and is intended to ensure that only one forum at a time has authority to act in a matter. See Medallion Exploration v. Acting Phoenix Area Director, 28 IBIA 276, 277 (1995), and cases cited therein. In Hammerberg v. Acting Portland Area Director, 24 IBIA 78, 79 (1993), the Board held that "[a]ny decision issued by BIA in a matter pending before the Board without express authorization from the Board is a nullity and is without any force or effect." This includes an Area Director's "withdrawal" of a decision which is the subject of an appeal to the Board. Dore v. Eastern Area Director, 31 IBIA 173 (1997).

The Board treats the September 30, 1997, letter and the Motion to Remand as a request that the Board vacate the Area Director's April 8, 1996, decision and remand this matter to the Area Director for further consideration. Although the Area Director states that Appellant does not object to this request, he does not provide any information concerning the position of the owners of Allotment No. 2258.

Nevertheless, under the circumstances of this case, the Board believes that final resolution of this controversy could be expedited by granting the Area Director's motion.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Billings Area Director's April 8, 1996, decision is vacated, and this matter is remanded to the Area Director for further consideration.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge